

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, NOVEMBER 16, 2001
TIME: 9:00 A.M.
PLACE: ROYAL KONA RESORT
ALII SURF ROOM
75-5852 ALII DRIVE
KAILUA-KONA, HI 96740

Chairperson Gilbert Coloma-Agaran called the meeting of the Board of Land and Natural Resources to order at 9:25 a.m. The following were in attendance:

MEMBERS:

Mr. Gilbert Coloma-Agaran	Mr. Timothy Johns
Ms. Lynn McCrory	Ms. Kathryn Inouye
Dr. Fred Holschuh	Mr. Ted Yamamura

STAFF:

Mr. Harry Yada, Land Division	Mr. Sam Lemmo, Land Division
Mr. Glenn Taguchi, Division of State Parks	Dr. Bill Walsh, Division of Aquatic Resources
Mr. Michael Buck, Division of Forestry and Wildlife	

OTHERS:

Ms. Dawn Shigezawa, Department of the Attorney General	Mr. Peter Garcia, Department of Transportation
Mr. Brian Takeda, D-14	Mr. Brian Masutani, D-14
Mr. Arthur B. Hansen, D-16	Mr. Richard McCarty, D-18
Mrs. Victoria McCarty, D-18	Mr. Edmund Kaawaloa, E-2
Ms. Tina Owens, F-2	Mr. Wayne Leslie, F-2
Mr. Dickie Nelson, F-2	Ms. Hannah Springer, F-2 & D-17
Mr. Scott Shero-Amba, F-2	Mr. Ray Iwamoto, D-13
Mr. Mark Murakami, D-2	Mr. Robert Garcia, D-1 & D-17
Mr. Peter Sheehan, D-5	Mr. Donald Yamada, D-3
Mr. Julio Resureccion, D-4	Mr. Christopher Yuen, D-17
Dr. Peter Vitousek, D-17	Mr. Skip Cowell, D-17
Ms. Kuulei Keakealani, D-17	Mr. Steven Araujo, D-17
Dr. B. Kaimiloa Chrisman, D-17	Mr. Richard Hoeflinger, D-17
Mr. Mikio Kato, D-17	Mr. Wayne Hagar, D-17
Ms. Betsy Gagne, D-17	Mr. Charles Isaacs, D-17
Mr. Rick Warshauer, D-17	Mr. Jim Coe, D-17
Mr. Gordon Cran, D-17	Mr. Nick Agorastos, D-17

Dr. Jeff Burgett, D-17
Mr. Ian Cole, D-17
Dr. Phil Barnes, D-17
Mr. Steven Hurt, D-17
Mr. Jay Schaaf, D-17
Mr. Randy Vitousek, D-17
Ms. Sally Rice, D-17
Mr. Clarence Ching, D-17
Ms. Kealoha Pisciotta, D-17
Mr. Flint Hughes, D-17
Mr. Bobby Camara, D-17

Mr. Dale Anderson, D-17
Mr. Jerry King, D-17
Ms. Roberta Brashier, D-17
Ms. Jenny Mitchell, D-17
Ms. Emma Yuen, D-17
Ms. Heather Cole, D-17
Mr. Samuel Gon III, D-17
Ms. Julie Leialoha, D-17
Ms. Marjorie Ziegler, D-17
Mr. Douglas Blake, D-17

{Note: language for deletion is [bracketed], new/added is underlined. }

ITEM A-1: APPROVAL OF THE SEPTEMBER 28, 2001 MINUTES

Member Inouye amended page 5, 1st paragraph, line 4, to read: "Member Inouye wanted to see the rules go out to public hearing, and give staff time to really assess [access] how the rules would [are] work[ing], and then ..."

Member Holschuh amended page 5, item D-5 to read: "ITEM D-5: GRANT[OR] OF PERPETUAL, NON-EXCLUSIVE...", and page 10, 4th paragraph, to read: "There was some discussion ...".

Unanimously approved as amended (McCroory/Holschuh).

ITEM D-19: APPROVAL IN CONCEPT TO PURSUE LAND EXCHANGE BETWEEN THE STATE OF HAWAII AND LANPAR/HTL ASSOCIATES, FOR PORTION OF STATE-OWNED SUBMERGED LANDS IDENTIFIED AS OFFSHORE OF TMK: (3) 6-9-7: 14 AND LANPAR/HTL ASSOCIATES-OWNED PROPERTY, WAIKOLOA, HAWAII

Mr. Harry Yada, Acting Administrator of the Land Division, indicated that a call was received from the Native Hawaiian Legal Corporation, requesting that this item be deferred.

Deferred (Holschuh/Inouye).

ITEM D-14: AMENDMENT TO PRIOR BOARD ACTION AND AFTER-THE-FACT GRANT OF PERPETUAL, NON-EXCLUSIVE AND ISSUANCE OF MANAGEMENT RIGHT-OF-ENTRY TO VERIZON HAWAII INTERNATIONAL, INC. FOR FIBER OPTICS TELECOMMUNICATION SYSTEM PURPOSES, NANAKULI, WAIANAE, OAHU, TMK: 8-9-06: POR. 01

Mr. Yada briefed the Board and recommended that the Board amend prior Board action of January 14, 2000 to include Easements C13, C14 and C15, grant a management right-of-entry to Verizon Hawaii International, Inc., subject to terms and conditions, and authorize the Chairperson to rescind this approval of the easement or to terminate the management right-of-entry if the applicant does not respond to requests for required items in a timely manner.

Mr. Brian Takeda, Project Planner for R.M. Towill Corporation, and Mr. Brian Masutani, Verizon Hawaii International, Inc., were present to answer questions.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM D-15: APPOINTMENT AND SELECTION OF A HEARING OFFICER TO CONDUCT ALL HEARINGS FOR A CONTESTED CASE HEARING RE: DOCKET NO. 02-02-MA: APPEAL OF SHORELINE CERTIFICATION FOR KOKUA TRUST BY CONTROLPOINT SURVEYING, INC. OF LOT 44, KAMAOLE BEACH LOTS (KEAWEKAPU SECTION), KAMAOLE, KIHAI, MAUI

Mr. Sam Lemmo, Senior Staff Planner for the Land Division, briefed the Board and recommended that the Board authorize the appointment of a Hearing Officer to conduct all the hearings relevant to the subject petition for a Contested Case Hearing, and that the Board delegate the authority for selection of the Hearing Officer to the Chairperson.

Unanimously approved as submitted (Yamamura/Holschuh).

ITEM D-16: CONSERVATION DISTRICT USE APPLICATION NO. 0A-3049B, CONSTRUCTION OF A REPLACEMENT HOUSE AT MAUNALAHA HOMESITE LOT 26, TMK: (1) 2-5-24: 006

Mr. Lemmo briefed the Board and recommended that the Board approve this application for a single family dwelling, subject to conditions.

Mr. Arthur B. Hansen, Architect representing Habitat for Humanity, was present to answer questions.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM D-18: CONSERVATION DISTRICT USE APPLICATION NO. MA-3035B FOR THE CONSTRUCTION OF A SINGLE FAMILY RESIDENCE AT HONOKOHAU, KAA NAPALI, LAHAINA, MAUI, TMK: (2) 4-1-02: 008

Mr. Lemmo briefed the Board and recommended that the Board deny this application for single-family residence use at Honokohau, Kaanapali, Lahaina, Maui. Staff's conclusion: 1) staff has determined that the proposed application for a single family residence, does not meet the criteria for

acceptability in the Limited subzone, because it is not within an area subject to flooding; and 2) it does not meet the criteria for kuleana use, because the non-conforming status of the kuleana parcel was lost when the lot configuration was altered.

Mr. Richard McCarty, Applicant, provided written and verbal testimony against staff's recommendation.

Member Yamamura, based upon current law, and staff's analysis and conclusion, made a motion to approve staff's recommendation to deny the application.

Member Johns supported the motion, and included, in addition to the reasons listed in staff's conclusion, that notwithstanding the Finding of No Significant Impact determination, the criteria under Chapter 13-5, Hawaii Administrative Rules (HAR), have not been met with respect to the compatibility with the surrounding area and compatibility with the subzone.

Member Inouye asked staff to report back to the Board, regarding the 1994 amendment to Section 13-5-23, HAR, that allows residential structures in a flood zone, and for possible repeal of that action, as well as a definition on the permitted uses in the Limited subzone.

Unanimously approved as submitted (Yamamura/McCrory).

Mr. McCarty indicated that they were caught short on being able to put things together for presentation, and asked if the Board allowed for reconsideration and/or request for a hearing. Chairperson Coloma-Agaran indicated that he would treat this inquiry as a request for a Contested Case Hearing, and advised the Applicant to talk to staff about the process.

ITEM D-20: ADDITIONAL EXTENSION OF THE 180-DAY PROCESSING PERIOD CONSERVATION DISTRICT USE APPLICATION NO. KA-3011B FOR THE HILL SINGLE FAMILY RESIDENCE AT ALIOMANU, KAWAIIHAU, KAUAI, TMK: (4) 4-9-005: 05

Mr. Lemmo briefed the Board and recommended that the Board approve the additional extension for 90-days to allow for the completion of the Contested Case Hearing.

Unanimously approved as submitted (McCrory/Holschuh).

ITEM K-1: CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-75-0006, DHL AIRWAYS, INC., ASSIGNOR, TO DHL CORPORATION, ASSIGNEE, HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK: (1)-2-3-8-01

Mr. Peter Garcia, Property Management Officer for the Department of Transportation, briefed the Board and recommended that the Board approve the Consent to Assignment of Lease No. DOT-A-75-0006.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM K-2: CONSENT TO SUBLEASE, PACIFIC AVIATION SERVICES, INC., LESSEE, TO FLIGHT SCHOOL HAWAII, INC., SUBLESSEE, HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK: (1)-2-3-8

Mr. Garcia briefed the Board and recommended that the Board authorize and grant a Consent to Sublease.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM K-3: ISSUANCE OF LEASE BY DIRECT NEGOTIATION TO ISLAND MOVERS, INC., PIER 42, HONOLULU HARBOR, OAHU, TMK: (1)-1-2-25-12

Mr. Garcia amended the submittal by deleting condition no 1. Department of Transportation's recommendation is that the Board approve the lease by direct negotiation, subject to terms and conditions.

Unanimously approved as amended (Inouye/Yamamura).

ITEM K-4: CONSENT TO ASSIGNMENT OF LEASE NO. DOT-A-90-26, CATERAIR INTERNATIONAL CORPORATION, ASSIGNOR, TO SKY CHEFS, INC., ASSIGNEE, HONOLULU INTERNATIONAL AIRPORT, OAHU, TMK: (1)-1-1-03

Mr. Garcia briefed the Board and recommended that the Board approve the Consent to the Assignment of Lease No. DOT-A-90-26, subject to terms and conditions.

Member Johns recused himself from this matter.

Unanimously approved as submitted (Inouye/Yamamura).

ITEM E-2: REQUEST FROM THE HUI MAKAI MOTORCYCLE CLUB TO USE THE EVENTS PAVILION AND A PORTION OF THE PAVILION PARKING AREA AT THE OLD KONA AIRPORT STATE RECREATION AREA IN KAILUA-KONA, HAWAII FOR THEIR 7TH ANNUAL TOYS FOR TOTS BENEFIT

Mr. Glenn Taguchi, Hawaii Parks District Superintendent for the Division of State Parks, briefed the Board and recommended that the Board approve the issuance of a Special Use Permit to the Hui Makai Motorcycle Club to hold their 7th Annual Toys for Tots benefit, subject to terms and conditions.

Member Holschuh asked if condition no. 6 that reads: "provide security against serving and consumption of alcoholic beverages outside of the Pavilion and the use of illegal drugs;" implies that this event will be serving alcohol in the Pavilion. Mr. Taguchi understood that alcoholic beverages will not be served at this event. Member Inouye suggested amending condition no. 6 by deleting "outside of the Pavilion."

Mr. Edmund Kaawaloa, representing Hui Makai Motorcycle Club, referred to condition no. 3 that requires the hiring of security, and requested that they be able to provide their own security throughout the Pavilion. He clarified that there will be no alcoholic beverages served at this event.

Member McCrory requested that condition no. 1 be deleted, to allow the exchange of monies.

The Board amended staff's recommendation as follows:

- "[1. not allow any exchange of monies at the Old Kona Airport State Recreation Area. Any goods or services (entry fees, food, etc.) shall be by redemption or scripts, coupons, tickets, etc., pre-sold or otherwise acquired off premises. However, exchange of monies at the Old Kona Airport State Recreation Area will be allowed if rule revisions permitting such exchange is adopted prior to the Event.]

- [3. provide and hire security, which shall include at least one (1) DLNR Conservation and Resources Enforcement Officer (CREO). Such DLNR CREO shall begin work at least one hour prior to the start of the Event, shall be present at the Event Site during all hours of operation up to one hour after the closing of the Event. Other Security personnel may include special duty Hawaii County Police Officer(s), other uniformed security personnel, etc.;

6. provide security against serving and consumption of alcoholic beverages [outside of the Pavilion]and the use of illegal drugs;"

Unanimously approved as amended (Holschuh/Inouye).

ITEM E-1: REQUEST TO APPROVE A CONSULTANT CONTRACT WITH THE LANGE GROUP TO MODERNIZE STATE PARKS RESERVATION AND VISITOR INFORMATION SYSTEM (SPRVIS)

Mr. Taguchi briefed the Board and recommended that the Board authorize the hiring of The Lange Group, and authorize the Chairperson to sign the necessary documents pertaining to the project.

Unanimously approved as submitted (Johns/Holschuh).

ITEM F-2: REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND HAR, CHAPTER 13-57, KEAUHOU BAY, HAWAII FISHERIES MANAGEMENT AREA AND CHAPTER 13-60.3, WEST HAWAII REGIONAL FISHERIES MANAGEMENT AREA

Dr. Bill Walsh, West Hawaii Aquatic Biologist IV for the Division of Aquatic Resources, briefed the Board and recommended that the Board approve the holding of public hearings for the amendments to Chapter 13-57, Keauhou Bay, Hawaii, and Chapter 13-60.3, West Hawaii Regional Fisheries Management Area.

Ms. Tina Owens, representing the Lost Fish Coalition, felt that the document as proposed is inadequate to go to public hearing because of some faults. She mentioned, in past rules that have been written by the Division, portions were advertently or inadvertently deleted, these portions of the previous rules have still not been added, and 2 years have past since that time. She referred to a portion of the rule that reads: "All regulations on the lay net fishing method that apply in the State, other than the regulations provided in this section, shall also apply within the area described in subsection (a).", and assumed that this clause was put in, in place of a number of provisions that was recommended by the West Hawaii Fisheries Council (WHFC). She indicated that the WHFC has done a lot of work to try to add provisions, particularly enforcement provisions, that would bring this gill net regulations in line with the proposed statewide gill net regulations. Her concern was that the proposed rules are coming up before the statewide regulations are in place.

Dr. Walsh indicated that some of the elements proposed by the WHFC are included in the proposed rules. He gave explanation on components that were left out, and asked that they be able to move forward with the proposed rules, and come back to the Board as soon as possible with the other rule components, and at the ultimate Public Hearing, combine them again.

Ms. Owens was concerned that this will create more confusion if it's passed through Public Hearing. She preferred, if it was legally viable with the Attorney General's Office, that both documents be ready for Public Hearing at the same time, with the understanding that they would be meshed together.

Mr. Wayne Leslie, Member of the ~~WHFC~~, was concerned that a lot of their recommendations gathered from the community and the kupuna's of the area have been omitted in this recommendation to the Board.

Mr. Dickie Nelson, Kona/West Hawaii Governor's Liaison, on behalf of the WHFC, supported the efforts of the council over the last 3 years on this particular subject. He appealed to the Board, to support the efforts and recommendations of the WHFC.

Ms. Hannah Springer, Co-Chair of WHFC, supported the tremendous investment, not only from the Members of the WHFC, but also from the community.

Mr. Scott Shero-Amba, DOCARE Officer, and Liaison Officer/Ex-officio Member of the WHFC, testified that they have been working in conjunction with the WHFC to find rules and regulation, and there are a number of provisions that were eliminated that are very important to these particular rules of enforcement on the field.

Member Holschuh made a motion to accept and approve the document as presented, however, not approve the holding of Public Hearings until the concerns that were raised by the various speakers be brought together with this document, so the entire package could go to Public Hearing.

Unanimously approved as amended (Holschuh/Inouye).

Member Inouye asked, the next time this issue is brought before the Board, if there are any recommendations of the WHFC that are not implemented in the rules, that an explanation be given (i.e. unenforceable).

ITEM F-1: REQUEST FOR APPROVAL TO HOLD PUBLIC HEARINGS TO AMEND HAR, CHAPTER 13-47, HILO BAY, WAILOA RIVER, AND WAILUKU RIVER, HAWAII FISHERIES MANAGEMENT AREA AND TO REPEAL CHAPTER 13-86, OCTOPUS, CHAPTER 13-87, ULUA, PAPIO, AND OMILU, AND CHAPTER 13-88, MOI, AND MOI-LII AND OAMA

Dr. Walsh briefed the Board and recommended that the Board approve the holding of public hearings for the amendments to HAR, Chapter 13-47, Hilo Bay, Hawaii and the repeal of Chapter 13-86, Octopus, Chapter 13-87, Ulua, Papio, and Omilu, and Chapter 13-88, Moi, and Moi-Lii and Oama.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-13: GRANT OF TERM, NON-EXCLUSIVE EASEMENT TO EVERSHINE VIII, L.P. FOR CHANNEL AND CONCRETE SURGE BREAK OR BREAKWATER PURPOSES, MAUNALUA, OAHU, TMK: (1) 3-9-26: SEAWARD OF 44

Mr. Yada briefed the Board, and amended page 2 of the staff submittal by replacing "LEASE TERM" with "EASEMENT TERM", and "ANNUAL RENT" with "RENT". Staff's recommendation is that the Board authorize the issuance of a term, non-exclusive easement to Evershine VIII for channel and breakwater purposes, subject to terms and conditions.

Mr. Ray Iwamoto, Evershine VIII, was present to answer questions.

Unanimously approved as amended (Inouye/Johns).

ITEM D-2: CONSENT TO ASSIGN GRANT OF EASEMENT NO. S-4249, BANK OF HAWAII, ASSIGNOR, TO MR. ALI AND MRS. AFSANEH GHALAMFARSA, ASSIGNEE, HONUULA, NORTH KONA, HAWAII, TMK: 3RD/7-5-07: 68, POR. KAKINA RD.

Mr. Yada briefed the Board and recommended that the Board consent to the assignment of Grant of Easement No. S-4249 from Bank of Hawaii, to Mr. and Mrs. Ghalamfarsa, subject to terms and conditions.

Mr. Mark Murakami, Bank of Hawaii, was present to answer questions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-1: CONSENT TO FIRST AMENDMENT TO SUBLEASE GENERAL LEASE NO. S-3601, WILLIAM T. WHITE, III TRUST, LESSEE, TO BCI COCA COLA BOTTLING CO. OF LOS ANGELES, INC., SUBLESSEE, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-49: 7

Mr. Yada briefed the Board and recommended that the Board consent to the first amendment to sublease under General Lease No. S-3601, subject to terms and conditions.

Mr. Robert Garcia, representing the Applicant, was present to answer questions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-5: GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT AND ISSUANCE OF AN IMMEDIATE RIGHT-OF-ENTRY TO THE ORLANDO LYMAN CHARITABLE TRUST, FOR ACCESS PURPOSES, PIIHONUA, SOUTH HILO, HAWAII, TMK: 3RD/2-5-09: 02, 03, 04 & 26

Mr. Yada briefed the Board, and amended page 1 of the staff submittal, by deleting under the ZONING section, "County of Hawaii CZO: Ag-20a". Staff's recommendation is that the Board approve the perpetual, non-exclusive access easement for access purposes, and authorize the issuance of an immediate right-of-entry to the trust.

Mr. Peter Sheehan, First Hawaiian Bank, was present to answer questions.

Unanimously approved as amended (Holschuh/Johns).

ITEM D-3: EXTENSION OF LEASE TERM AND CONSENT TO MORTGAGE, GENERAL LEASE NO. S-3583, YAMADA CONSOLIDATED, INC., LESSEE, WAIAKEA LOTS, WAIAKEA, SOUTH HILO, HAWAII, TMK: 3RD/2-2-37: 52, 92 & 93

Mr. Yada briefed the Board and recommended that the Board authorize the extension of General Lease No. S-3583, and consent to the mortgage between Yamada Consolidated, Inc., and First Hawaiian Bank, in accordance with terms and conditions.

Mr. Donald Yamada, Yamada Consolidated, Inc., was present to answer questions.

Unanimously approved as submitted (Holschuh/Johns).

ITEM D-4: CANCELLATION OF REVOCABLE PERMIT NO. S-6941, MR. JULIO RESURECCION, PERMITTEE, KEOPU 2, NORTH KONA, HAWAII, TMK: 3RD/7-5-01: 22

Mr. Yada briefed the Board and recommended that the Board require the removal of all structures within 30-days, otherwise, proceed with the cancellation of Revocable Permit No. S-6941.

Mr. Julio Resureccion, Permittee, testified that he does not reside on the premises, and that he uses the land for pasture purposes.

In response to questions raised by the Board, Mr. Yada explained that the structure was permitted under the former lease, prior to the revocable permit. Staff's position is that 17-acres does not really justify a tack room/equipment storage shed, and is suggesting at this point, based on the character of use for pasture purposes, and complaints received from the neighboring residential subdivision, that it would be in the State's best interest to remove the structure.

Unanimously approved as submitted (Holschuh/McCrory).

ITEM D-6: ISSUANCE OF REVOCABLE PERMIT TO MR. FRANKLIN M. JR. AND MRS. PATRICIA CONTRADES, POR. ANAHOLA LOTS AND KULEANAS, KAWAIIHAU, KAUAI, HAWAII, TMK: 4-8-8: 2

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a revocable permit, in accordance with terms and conditions.

Unanimously approved as submitted (McCrory/Holschuh).

ITEM D-7: CONSENT TO ASSIGN PERPETUAL, NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT [L.O.D. NO. S-28093], FROM HALAULA ROAD ASSOCIATION, LLC, AS ASSIGNOR, TO MR. LAFAYETTE & MRS. BEVERLY YOUNG IV, MR. THOMAS W. & MRS. JILL W. BAUSS, MR. MICHAEL W. & MRS. SHARON A. APPLEBY, MR. THOMAS M. FREDERICKSEN, MR. JEFFREY W. & MRS. DEBORAH K. WITTMAN, AND MS. JEAN G. WITTMAN, HONOPOU, MAKAWAO, MAUI, TMK: (2) 2-9-003: PORS. 016, 017, 020 & 039

Mr. Yada briefed the Board and recommended that the Board consent to the assignment of the easement from the association to the various landowners.

Unanimously approved as submitted (Yamamura/McCrory).

ITEM D-8: RESCIND PRIOR BOARD ACTION OF MARCH 24, 1994 (AGENDA ITEM F-12), DIRECT SALE OF TERM, NON-EXCLUSIVE EASEMENT TO GTE HAWAIIAN TELEPHONE CO. AND GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO VERIZON HAWAII INC. FOR COMMUNICATION CABLE PURPOSES AT WAILUA, KAUAI; MAUNALUA, OAHU; AND KAWAIIHAE, HAWAII, TMKs: (4) 3-9-2: POR. 4; (1) 3-9-12: POR. 2; (3) 6-2-2: POR. 8

Mr. Yada briefed the Board, and amended the title, and staff recommendation no. 2, line 4, to read: "... for communication cable [utility]purposes ...".

Unanimously approved as amended (Johns/McCrory).

ITEM D-9: AFTER-THE-FACT GRANT OF PERPETUAL, NON-EXCLUSIVE EASEMENT TO MAUI ELECTRIC COMPANY LIMITED, FOR UTILITY PURPOSES, ISSUANCE OF A MANAGEMENT RIGHT-OF-ENTRY, LAHAINA, MAUI, TMK: (2) 4-3-1: POR. 6

Mr. Yada briefed the Board and recommended that the Board authorize the issuance of a perpetual, non-exclusive easement for utility purposes, and authorize the issuance of a management right-of-entry to Maui Electric Co., subject to terms and conditions.

Unanimously approved as submitted (Yamamura/Inouye).

ITEM D-10: CONSENT TO ASSIGN GRANT OF EASEMENT NO. 5123, MR. JAMES T. POSNER, TRUSTEE OF THAT CERTAIN REVOCABLE TRUST AGREEMENT, JAMES T. POSNER-TRUST 90, DATED APRIL 1, 1990, ASSIGNOR, TO MR. JAMES T. POSNER, TRUSTEE OF THE JAMES T. POSNER TRUST 2001, DATED OCTOBER 9, 2001, ASSIGNEE, HONOLULU, OAHU, TMK: (1) 3-1-35: POR. 23

Mr. Yada briefed the Board and recommended that the Board consent to the assignment of Grant of Easement No. 5123, subject to terms and conditions.

Unanimously approved as submitted (Inouye/McCrory).

ITEM D-11: REQUEST ISSUANCE OF A LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD NO. 10008 TO LEPOLOA, SITUATE AT HIONAA, KAU, ISLAND OF HAWAII, TMKs: (3) 9-5-14: POR. 7 [FORMERLY 27] AND (3) 9-5-15: POR. 5

Mr. Yada briefed the Board and recommended that the Board consent to the issuance of a Land Patent in confirmation of Land Commission Award No. 10008 to Lepoloa, subject to terms and conditions.

Unanimously approved as submitted (Holschuh/Inouye).

ITEM D-12: REQUEST ISSUANCE OF A LAND PATENT IN CONFIRMATION OF LAND COMMISSION AWARD NO. 9212 TO HOOLAPA, SITUATE AT HONUAPO, KAU, ISLAND OF HAWAII, TMK: (3) 9-5-14: POR. 7 [FORMERLY 4] AND POR. 17 [FORMERLY 13]

Mr. Yada briefed the Board and recommended that the Board consent to the issuance of a Land Patent in confirmation of Land Commission Award No. 9212 to Hoolapa, subject to terms and conditions.

Unanimously approved as submitted (Holschuh/Johns).

The Board recessed at 11:34 a.m. The meeting was reconvened at 11:57 a.m.

ITEM D-17: APPROVAL OF A SET ASIDE TO THE DIVISION OF FORESTRY AND WILDLIFE (DOFAW); APPROVAL OF SET ASIDE TO THE DIVISION OF STATE PARKS; APPROVAL IN PRINCIPLE OF A DIRECT LEASE AND MEMORANDUM OF UNDERSTANDING WITH KAAHAHUI O PUUWAAWAA (HUI) ON STATE LANDS AT PUUWAAWAA AND PUUANAHULU, NORTH KONA, HAWAII, TMKs: 3RD/7-1-01: 01, 06 & 04; 3RD/7-1-02: 01, 08 & 13; 3RD/7-1-03: 01, 02 & 16; 3RD/7-1-04: 01 & 18; AND 3RD/7-1-05: 05

Mr. Yada briefed the Board and recommended that the Board: 1. Approve of and recommend to the Governor the issuance of an executive order setting aside lands to DOFAW as a Multi-Use Resource, Cultural, Recreational and Game Management Area; 2. Approve of and recommend to the Governor the issuance of an executive order setting aside lands to the Division of State Parks for the Purposes of Park, Recreational, Cultural, and other Resource Management Purposes; 3. Approve in principle, a direct lease and/or Memorandum of Understanding between DOFAW, State Parks and the HUI pursuant to Chapter 171-43.1, HRS, for the overall management of the ahupuaa of Puuanahulu and Puuwaawaa; and 4. Approve the establishment of an Ahupuaa Advisory Council to act as an advisory capacity to the Board for overall management and dispositions within the lands of Puuanahulu and Puuwaawaa, subject to terms and condition.

Member McCrory, regarding condition no. 4, that mentions the establishment of an Ahupuaa Advisory Council to act as an advisory capacity to the Board, was concerned that the Board was so intimately involved in the details of management.

Mr. Michael Buck, Administrator of DOFAW, requested that condition no. 3 be amended to exclude the Puuwaawaa Bird Sanctuary and the Puuanahulu Game Management Area which have already been approved as a set aside to DOFAW in past Board actions, and that condition no. 4, establishment of the Ahupuaa Advisory Council, be deleted and revisited at a later date when a formal lease or MOU is presented to the Board. He suggested, that one of the areas adjacent to the sanctuary become a demonstration area for some level of sustainable game hunting and preservation of native resources. He indicated that there are a lot of conflicting experts with their own opinions, but they need to get on the ground to be able to try some of them.

Mr. Buck responded to questions raised by the Board. In regards to the letter written and signed by DOFAW Hawaii Island Branch Employees as private individuals, he believed their basic issue was that it's State land and should remain in State control, and that they are committed to working as hard as they can to make it happen. He indicated that he was proud of his staff for their willingness to step up to the plate, but his concern has always been, the lack of resources to do what people want on the property. In regards to the first preservation project that each would need to do, the current management objectives on the wildlife sanctuary should be retained, and both projects need to be able to show that there is a process to begin to restore dry land forest areas with some sort of grazing and fire control.

Ms. Hannah Springer, President of the HUI, introduced some of the Directors, gave some history of the subject area, and some background information of their proposal.

Mr. Christopher Yuen, Vice-President of the HUI, raised some issues with regard to the staff submittal: 1) a longer lease term of 35-years with strict controls and performance standards that enable the State to terminate the lease if they are not performing, rather than the proposed 15-year term which is not a long time to accomplish the kinds of projects they would like to on the land. 2) supports the 8-acre parcel, TMK: 7-1-05: 05, going to Hui Ohana Mai Puuanahulu A Me Puuwaawaa. 3) request that a condition be added, if the Board does move forward with this, that they be able to have reasonable access on reasonable notice, to do the great deal of work (studies, inspection of buildings and alike), in the interim before they actually get on the land. 4) condition no. 3. B. is written to make it sound like the management plan should proceed the Environmental Assessment, when they should be concurrent. 5) agreed with Mr. Buck's comment about the Ahupuaa Advisory Council, that this be brought back to the Board, as this is an idea that needs to be thought out and put together in more detail.

Dr. Peter Vitousek, Professor at Stafford University and Member of the HUI, explained some of their ideas for preservation and areas planned for fencing.

Member McCrory was concerned that the HUI's proposal did not come forth with a preservation plan that included various specific items with dollar amounts attached to them in a particular order.

In response to a question raised by Member Johns regarding the certainty of the grants and the degree of control needed, Mr. Vitousek indicated that they have received donations and grants already, and as far as securing additional foundation grants, he was confident that the grants will come through if the land is committed.

Mr. Skip Cowell, President of Tropical Reforestation & Ecosystems Education Center, and Member of the HUI, indicated that there will be revenues or expenses that will come as a result of the partnership in the education programs. He also explained their vision, and what they would like to see, 3 years from now.

In response to question raised by Member Holschuh regarding the possibility of the Board not passing condition no. 3, would there be a problem with partitioning different projects on the 20,000 acre lease area, different groups managing different areas of the ahupuaa, Ms. Kuulei Keakealani, President of Hui Ohana Mai Puuanahulu A Me Puuwaawaa, and Member of the Hui, who has had concerns about cultural and educational resources, did not have a problem with different groups trying to work together for a purpose, or purposes.

In response to a question raised by Member Inouye regarding suggestions on the type of performance standards that would be set in place, Mr. Yuen stated that there are a number of standards that could be set, number of preservation areas, repair and maintenance of facilities and alike. Ms. Springer added, that in addition, services of Natural Resources Conservation Service could be used to develop performance standards for preservation areas.

Mr. Steven Araujo, Vice-President of the Wildlife Conservation Association of Hawaii (WCAOH), and previous President of the Hawaii Hunting Advisory Council, introduced members of the association, and submitted written testimony. He explained that their proposal, formulated by hunters and ranchers, is a multi-use proposal, based on local lifestyle, local tradition, and local culture. He indicated that they are dependent on volunteers for now, and realized, should the Board favor their proposal, that a lot of work and commitment is ahead of them.

Dr. B. Kaimiloa Chrisman, Member of WCAOH, commented on the specific areas proposed for protection. He indicated that the other proposal, that involves the fence and eradicate paradigm, is no longer a valid paradigm, that there are other ways to do it. He mentioned "tree tubes", that have been very effective in planting trees that need protection, right in the presence of animals both wild and domestic, this way, the fire control and reforestation could be done at the same time.

Member McCrory asked for the preservation part of WCAOH's plan. She was concerned that their budget did not include any expenses directed to preservation areas. Mr. Chrisman indicated that because they don't yet have their 501 (c)(3), they were unable to come forward with promises from certain foundations, however, what they do have is hundreds of volunteers who have put in many hours at Puuwaawaa in the last 2 years alone. He stated that an important part of their proposal is that they offer volunteer commitments for the first year which is worth a great deal of money in matching funds to the State, that this is the kind of thing they can definitely offer on the ground right now and not wait for grants or any other kind of funding.

Mr. Richard Hoeflinger, President of the Pig Hunters Of Hawaii, and Member of the WCAOH, read through and submitted written testimony on behalf of the 385 member organization in support of the proposal submitted by WCAOH. He also provided names of 759 local residents that have expressed support for the WCAOH proposal.

Mr. Mikio Kato, Puuwaawaa Cattle Company, and member of the WCAOH, provided written and verbal testimony in support of the proposal submitted by WCAOH. His main comments were fire fuel management using managed grazing, preservation and restoration, and repair of the one million gallon reservoir on Puuwaawaa Ranch.

Mr. Wayne Hagar, testified as an individual user of Puuwaawaa and Puuanahulu. He commended the staff for an outstanding job of putting together the pieces in coming up with this submittal. He testified in favor of condition no. 3, as he felt the Board is being asked to approve in principle a direct lease, not agreeing to a lease, and that this will be revisited by the Board and more importantly back in front of the citizens of Hawaii. He commented on condition no. 4, the establishment of an Ahupuaa Advisory Council, that it should not be under the direct control of the Board, that it should be at a working level of the lessee with the accountability in reporting to the Board.

Ms. Betsy Gagne, DOFAW Employee (vacationing), read through and submitted written testimony on behalf of the Hawaiian Botanical Society in strong support of the HUI's proposal. She indicated that these views are not to reflect her or her Employers views.

Mr. Charles Isaacs, Board Member and Treasurer of Ahahui Malama I Ka Lokahi, summarized written testimony in support of the proposed multi-use plan of the HUI for the ahupuaa of Puuwaawaa and portions of Puuanahulu.

Mr. Rick Warshauer, Conservation Biologist, and Member of the State Endangered Species Recovery Committee, read through written testimony strongly urging the Board to approve the lease to the HUI.

Mr. Jim Coe, didn't think that any group should get the lease. He felt that there is a certain moral obligation to the public and people of this island to keep this area open for everyone.

Mr. Gordon Cran, Rancher, and Director of the Hawaii Cattle Producers Cooperative Association, testified that uncontrolled grazing and unprotected forest are incompatible. He felt that Puuwaawaa, with good management, can be kept in a form that everyone wants, but it has to come from honest intentions, and it's up to the Board to decide how to handle this, keeping in mind the economic aspects of the entire State.

Mr. Nick Agorastos, Public Citizen, provided written and oral testimony in support of the HUI's proposal, as he believed it to be thorough, comprehensive, and truly a benefit to the people of Hawaii.

Dr. Jeff Burgett, Leader of the Alala Recovery Team, read through written testimony, asking that the Board consider the needs of Native Hawaiian Species in assigning the lease, and that the Board not take any action that would reduce the potential value of Puuwaawaa as habitat for the Alala and other endangered species.

Mr. Dale Anderson, on behalf of Mr. Jon Sabati, Island Chapter President of the National Wild Turkey Federation, testified in support of the WCAOH's proposal for Puuwaawaa and Puuanahulu.

Mr. Ian Cole, expressed his support for the HUI's proposal. He felt their plan would provide the most beneficial activities for the land.

Mr. Jerry King, testified in support of the HUI proposal.

Dr. Phil Barnes, Chairperson of the Moku Loa Group of the Sierra Club, provided written and oral testimony in support of the HUI's proposal for the management of the ahupuaa. The HUI's proposal would both protect the aina as well as create a unique area where future generations of Hawaii could get in touch with their cultural roots, increase understanding of our natural resources, and have the opportunity to make a living with dignity.

Ms. Roberta Brashier, submitted written and verbal testimony on behalf of the Hawaii Chapter of the Sierra Club, in support of the HUI's proposal for a long-term lease at Puuwaawaa.

Mr. Robert Garcia, testified on behalf of the Ranchers. He asked that this matter be deferred, that it be taken back and perhaps a council be appointed of independent people to re-look at the whole thing, because whatever decision the Board decides to make, will have long range and potentially devastating effect on the local people of Puuwaawaa. He also submitted written testimony on behalf of Dr. William Bergin, President of the Paniolo Preservation Society, recommending that the Board defer action on this agenda item.

Mr. Steven Hurt, President of Big Island Bird Hunters, read through written testimony in favor of the WCAOH proposal for improvement of the land and for future generations of our local youths.

Ms. Jenny Mitchell, representing the Hind Family, who has been part of the ahupuaa since the late 1800's, testified in support of the HUI's proposal.

Mr. Jay Schaaf, testified in favor of the HUI's proposal. He felt that the aina has suffered enough, and that there is a need for a different kind of change and management.

Ms. Emma Yuen, testified in support of the HUI's proposal, as it will keep the forest and preserve a very much loved island.

Mr. Randy Vitousek, Member of the HUI, testified that many of the people involved in the HUI, are connected to the land for many years, and for some, many generations. He believed the foundation of the HUI's plan is to reduce conflict, increase cooperation, and make good things happen on the ground, which he felt was also the basis in getting it funded.

In response to questions raised by Member McCrory regarding the first year plan for preservation, public access, and the full-time equivalent staff person to work with The Nature Conservancy, Ms. Heather Cole, The Nature Conservancy, and Member of the HUI, indicated that in essence, their first year plan for preservation has not yet been defined, however, the HUI has agreed that the first efforts are going to be fire protection, which is definitely restoration. Ms. Sally Rice, Member of the HUI, pointed out that one of the premises of having the Ahupuaa Advisory Council is to address and plan issues, such as public access, together as a group. Ms. Cole stated that they are asking for the State commitment of one full-time equivalent staff person to work with the TNC staff in managing the

State land at Puuwaawaa because it is State land, and it is a State lease, and they felt it fair that if they are going to provide a full-time equivalent, that the State also participate.

Ms. Keakealani, asked that the Board consider the removal of the Old Puuanahulu School Lot, TMK: (3) 7-1-05:05, from this package of assignments, which has never been an issue for either the HUI or WCAOH. She indicated that she is in support of the HUI proposal.

Mr. Samuel Gon III, Biologist, testified in enthusiastic support of the HUI's proposal.

Mr. Clarence Ching, offered written and oral testimony as a Lineal Descendant, a Cultural Descendant, a Cultural Practitioner, and a Native Hawaiian of the subject area. He did not support either proposal, but supported a proposal that would include all stakeholder groups. He believed that a melding of the two proposal along with cooperation of the principals of both groups, including Native Hawaiian Practitioners, could result in a very workable plan. He wanted the lease to have some kind of language that states, subject to Native Rights.

Ms. Julie Leialoha, provided written and oral testimony in support of the HUI's proposal. She commented on the Chapter 343, HRS, requirement, and wanted to see something in writing that says, if the lease is given to the HUI in concept, that they could actually implement their proposal at that time.

Ms. Kealoha Pisciotta, on behalf of KAHEA - The Hawaiian Environmental Alliance, submitted written and oral testimony in strong support of the HUI proposal. She also testified as Commissioner of the Burial Council, in support of the HUI's proposal.

Ms. Marjorie Ziegler, on behalf of Earthjustice, testified in support of the HUI's proposal. She also testified on behalf of the Corporation Council of Hawaii, Hawaii Audubon Society, Life of the Land, and the Environmental Defense, all in support of the HUI's proposal.

Mr. Flint Hughes, on behalf of the U.S. Forest Service, provided written and oral testimony in support of the HUI's proposal.

Mr. Douglas Blake, President of the Kona Conservation Group, submitted written and oral testimony in support of the HUI's proposal.

Mr. Bobby Camara, testified in strong support of the proposal by the HUI.

Member Holschuh made a motion that:

Recommendations no. 1 and 2 be adopted: the 8 acres TMK: (3)/7-1-05:5 be evaluated for removal by the Land Division and brought back to the Board.

Recommendation no. 3 not be adopted.

Recommendation no. 4 be renumbered as Recommendation no. 3 and be amended by addition and substitution to read as follows:

Approve the establishment of a management team which shall be comprised of representatives of the interested parties (the ranchers, hunting groups, Native Hawaiians, environmental groups, etc.) and shall be appointed by the Board.

This team shall be advisory to and under the auspices of DOFAW and State Parks and be administered by them. The team shall be tasked with the partitioning of parcels to accomplish and meet project goals set by the team, subject to the following terms and conditions:

- A. DOFAW and State Parks shall draft a selection process including membership and numbers of members on the team for approval of the Board;
- B. Confirmation of team members shall be done by the Board;
- C. The immediate goal of the team will be to oversee the 20,000 acre lease area to ensure that any partitioning done on the lease area addresses the need for:
 - 1. viable cattle ranching;
 - 2. sustainable bird and mammal hunting;
 - 3. appropriate protection of threatened and endangered species;
 - 4. experimental treatments of parcels to attempt restoration of native forests; and,
 - 5. fire control.
- D. The team will consult with appropriate State and Federal agencies to accomplish the goals outlined in C.;
- E. Subject to the review and approval of the Department of the Attorney General; and
- F. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Member Yamamura seconded.

Member Inouye was concerned that the recommended amendments were a lot to grasp, that there wasn't enough time to review it, digest it, and make a motion before the meeting adjourned. (The Board was losing quorum at around 3:30 p.m.). She did not support the motion.

Vote: In favor of the motion (Holschuh/Yamamura)
Against the motion (Inouye/McCrory/Johns/Coloma-Agaran).

Motion failed to pass.

Member Johns made a second motion, to accept staff's recommendation with the following amendments:

Recommendation no. 1 be amended to clarify that the Puuwaawaa Bird Sanctuary (portion of TMK: 7-1-01:01) and the Puuanahulu Game Management Area (TMK: 7-1-03: 01 and 7-1-04: 01), which have already been approved as a set aside to DOFAW in past Board action, stay in place, and that the Board's previous action not be rescinded.

Recommendation no. 3 be amended to add the management concepts and ideas expressed by the WCAOH, and the DOFAW employees who signed the independent letter, be incorporated in the development of the direct lease, or at least reported back when the lease comes back to the Board.

Recommendation no. 4 be amended to read: "Approve the establishment of an Ahupuaa Advisory County to act as an advisory capacity to the Department and that quarterly reports be given to the Board for overall management..."

That appropriate language, working with the Department of the Attorney General's, be added to cover the Native Rights issue raised by Mr. Ching.

Member Inouye seconded, and proposed a further amendment to recommendation no. 1, that TMK: (3) 7-1-05:05, be set aside to the Old Puuanahulu School Lot.

Member McCrory gave reason for not supporting the proposals or motion, that the WCAOH presented a reasonable 5-year business plan but wasn't sure what they were going to do for preservation, and the HUI indicated that they were going to fence but didn't have a preservation plan for the first year.

Vote: In favor of the motion (Johns/Inouye/Coloma-Agaran)
Against the motion (McCrory/Holschuh/Yamamura)

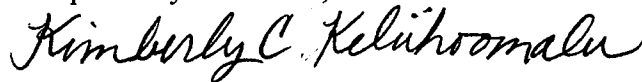
Motion failed to pass.

No action.

There being no further business, Chairperson Coloma-Agaran adjourned the meeting at 3:45 p.m.

Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present

Respectfully submitted,



Kimberly C. Keliioomalu

Approved for submittal:



GILBERT S. COLOMA-AGARAN

Chairperson

Board of Land and Natural Resources

